

Paper No. 11  
Bottorff

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      MAY 25, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Automotive Rentals, Inc.

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Serial No. 75/324,370  
Serial No. 75/324,371

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Robert T. Egan of Archer & Greiner for Automotive Rentals,  
Inc.

Katherine M. Bush, Trademark Examining Attorney, Law Office  
112 (Janice O'Lear, Managing Attorney)

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Before Hairston, Chapman and Bottorff, Administrative  
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant has filed two intent-to-use applications to register the mark FLEETNET, in typed form, for goods identified in the respective applications as "computer software to be used in creating specifications for fleets of vehicles, not including public transportation systems," in Class 9, and "computer manuals for software to be used

in creating specifications for fleets of vehicles," in Class 16.<sup>1</sup>

The Trademark Examining Attorney refused registration in both applications pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d), citing previously-issued Registration No. 1,748,261 as a bar to registration of applicant's mark.<sup>2</sup> The cited registration is of the mark FLEET NET COMPUTER SYSTEMS and design, as depicted below (FLEET and COMPUTER SYSTEMS disclaimed), for "computer programs, and instruction sheets and manuals accompanying the programs, for public transportation systems."

When the refusal was made final in each application, applicant filed a request for reconsideration in the Class 9 application, Serial No. 75/324,370, along with a request

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<sup>1</sup> The Class 9 application is Serial No. 75/324,370, filed July 14, 1997. The Class 16 application is Serial No. 75/324,371, also filed July 14, 1997.

<sup>2</sup> Registration No. 1,748,261, issued January 26, 1993. Section 8 and 15 affidavits accepted and acknowledged.

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that the identification of goods in that application be amended to add the words "not including public transportation systems." (No similar request for reconsideration or amendment was filed in the Class 16 application, Serial No. 75/324,371.) The Trademark Examining Attorney accepted the amendment to the identification of goods in Serial No. 75/324,370, but maintained the final refusal of registration.

The Board has consolidated the two applications for purposes of appeal. Applicant and the Trademark Examining Attorney have filed main briefs, and applicant has filed a reply brief. No oral hearing was requested. We shall render our decision with respect to both applications in this single opinion.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We turn first to a determination of whether the goods recited in applicant's applications are sufficiently related to the goods recited in the cited registration to result in a likelihood of source confusion if these goods were to be marketed under the same or confusingly similar marks. In this regard, it is settled that the goods need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of the goods or services. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

We find that the requisite commercial relationship between applicant's goods and registrant's goods exists in this case. Indeed, the respective goods are identical to the extent that they both encompass software and related literature to be used in connection with, and by the operators of, fleets of vehicles.

Applicant argues that registrant's goods are specifically limited to software and literature used in connection with "public transportation systems," a field of use expressly excluded from the vehicle fleet management software identified in applicant's Class 9 application. Applicant also argues that its Class 9 software and its Class 16 literature will be directed, generally, to owners and managers of private vehicle fleets who have nothing to do with providing public transportation services. In contrast, applicant argues, the likely purchasers of registrant's software and related literature are government entities, inasmuch as such entities are the only, or at least the predominant, owners and operators of "public transportation systems."

We are not persuaded by applicant's arguments. First, applicant's goods as identified in its Class 16 application are not limited or restricted so as to exclude their being used in connection with "public transportation systems," so applicant's reliance on such a limitation or restriction is misplaced insofar as the Class 16 application is concerned.<sup>3</sup>

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<sup>3</sup> Moreover, even if applicant had amended its Class 16 identification of goods to insert the "not including public transportation systems" restriction, we still would find applicant's Class 16 goods to be related to the goods identified in the registration, for the reasons discussed below in connection with the Class 9 application.

Public transportation systems certainly utilize fleets of vehicles, and the owners and operators of public transportation systems presumably are involved in the creation of specifications for those fleets of vehicles. To the extent that those owners and operators use or may use computer software in the course of their creation of vehicle fleet specifications, they must be presumed to be among the normal classes of purchasers for goods of the type identified in applicant's Class 16 application, i.e., "computer manuals for software to be used in creating specifications for fleets of vehicles."

In its Class 9 application, applicant has amended the identification of goods to read "computer software to be used in creating specifications for fleets of vehicles, not including public transportation systems." The wording of the resulting amended identification of goods is somewhat awkward and unclear, but we presume from the nature of applicant's arguments on appeal that its intent in amending the application was to clarify that the "fleets of vehicles" with which applicant's software is to be used do not include those fleets of vehicles which are used in or as part of public transportation systems.

However, applicant's amendment does not suffice to eliminate the commercial relationship between its software

and the software identified in the cited registration. We will assume, arguendo, that applicant is correct in asserting that the likely or exclusive purchasers of registrant's software are government entities, and that they are the primary or exclusive providers of public transportation services.<sup>4</sup> The Internet evidence made of record by the Trademark Examining Attorney shows, however, that government entities own and operate fleets of vehicles which have nothing to do with public transportation systems. That is, in addition to fleets of buses or other vehicles used as part of a public transit system, government entities also have fleets of city or county cars, as well as fleets of police cars, fire trucks, maintenance trucks, etc. Nothing in applicant's amended identification of goods restricts applicant from marketing its fleet management software to government entities for use with these other fleets of vehicles.

In short, even assuming arguendo that the respective goods are not identical or interchangeable, i.e., that applicant's software would not be used in connection with fleets of vehicles used in public transportation systems,

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<sup>4</sup> There is no evidence in the record to support the Trademark Examining Attorney's arguments that government entities often contract or sub-contract with private entities for the provision of public transportation services, or that private entities provide "quasi-public" transportation services.

and that registrant's software likewise would not be used in connection with fleets of vehicles other than those used in connection with public transportation systems, we nonetheless find that the respective goods are closely related. They may differ in terms of the particular types of vehicle fleets they are designed to manage, but they still are both vehicle fleet management software products. Moreover, we must presume that applicant's software and registrant's software can be marketed to and used by the same class of purchasers, i.e., government entities, who would use software such as registrant's in connection with their public transportation system vehicle fleet, and software such as applicant's in connection with their other vehicle fleets. We find that applicant's and registrant's goods are sufficiently related that source confusion is likely to result if the goods are sold under confusingly similar marks.

Thus, it remains to be determined whether applicant's mark is confusingly similar to the registered mark, when both marks are viewed in their entirety in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their

overall commercial impressions that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd unpub'd* (Fed. Cir. 6/5/92); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In this case, we find that the dominant feature in the commercial impression created by the registered mark consists of the words FLEET NET, a designation which is essentially identical to applicant's mark FLEETNET. See *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

FLEET NET appears in the registered mark in very large type and is very prominently placed in the overall layout of the mark. It clearly is more dominant than the words COMPUTER SYSTEMS, which are depicted in very small type and

which in any event are disclaimed, highly descriptive terms as applied to the identified goods. While we cannot ignore this disclaimed matter, we find that it contributes very little to the commercial impression created by the registered mark. Although the word FLEET also has been disclaimed in the registered mark, we nonetheless find that it contributes significantly to the commercial impression created by the mark due to its prominent size and placement and the manner in which it combines with the similarly-prominent word NET to form the designation FLEET NET.

We also find that the wording FLEET NET is more dominant than the design feature appearing in the registered mark, i.e., the drawing of the bus, in the commercial impression created by that mark. In marks consisting of both words and a design feature, the verbal portion of the mark often is considered to be the more dominant feature in the commercial impression created by the mark. *See, e.g., In re Appetito Provisions Co., Inc.* 3 USPQ2d 1553 (TTAB 1987). That is especially so in this case, where the bus design feature, appearing as it does in a mark applied to goods used in connection with public transportation systems, would be perceived as highly suggestive of those goods. The purchaser is more likely to

look to the words FLEET NET as the source identifier in the registered mark.

Moreover, the presence of the bus design feature in the registered mark does not eliminate the likelihood of source confusion in this case. Purchasers are likely to assume that fleet management software sold under the mark FLEET NET or FLEETNET originates from a single source, and they are likely to regard the differences between the marks as merely reflective of differences between particular types of fleet management software offered by that source. That is, purchasers are likely to assume that the presence of the bus design feature in one of the marks merely reflects the fact that the particular software sold under that mark is designed for use with fleets of public transit vehicles, i.e., that it is the "public transportation system" version of FLEETNET or FLEET NET vehicle fleet management software.

In summary, having considered all of the evidence of record pertaining to the relevant *du Pont* evidentiary

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factors, we find that a likelihood of confusion exists.

Decision: The refusals to register in application  
Serial Nos. 75/324,370 and 75/324,371 are affirmed.

P. T. Hairston

B. A. Chapman

C. M. Bottorff

Administrative Trademark Judges  
Trademark Trial and Appeal Board